

James Reston Jr.

# Impeachment Standards

In February, the staff of the House Judiciary Committee released an excellent report on the Constitutional grounds for impeachment. Replete with historical background on the English roots of impeachment law and on the Framers' intentions in the Constitutional Convention, the report concluded that criminality or indictable crime was not the sole standard for judging presidential misconduct. Stating that impeachment and the criminal law serve different purposes and that impeachment was not intended as a substitute for the criminal law, the report said:

*In an impeachment proceeding a President is called to account for abusing powers that only a President possesses.*

*Mr. Reston is an author and lecturer in creative writing at the University of North Carolina.*

And yet that's the last we've heard of a general standard. Since that time the thrust of the inquiry has been the search for the specific criminal offense. Committee members are reported to consider Book 2, Volume 5 (March 21 tape) the most important evidence against the President. Or they spend hours poring over what the President said to Dean, Haldeman, Petersen, etc. to the point where one member has color coded his evidence books making one man red, the other green and so on. In this sense, the existence of the tapes and the transcripts is a disservice to the inquiry, for they have to cused attention on the minutest detail and distracted from the larger picture.

Is the March 21 tape really the most important evidence there is? Why should the priority of the committee be on a conversation that took place nine months after the Watergate break-in, when it is clear that the cover-up was set in place in the days immediately after the event? Without meaning to downgrade the significance of March 21, is it any more important, for example, than the President's admitted approval of the Huston Plan of 1970 (the intelligence plan which the President claimed to have rescinded because of the practical rather than the moral or legal objections of J. Edgar Hoover.) Here is an American President saying early in his administration, as a matter of principle, that restraints on wiretapping ("electronic surveillance") and burglary ("surreptitious entry") are to be removed. Isn't that the message that spread through his administration, whether or not it was rescinded, and that set the tone and started the whole mess? Impeachment articles should begin with the Huston plan.

*"Why should the priority of the committee be on a conversation that took place nine months after the Watergate break-in?"*

In its search for specific crime, the committee seems to be deemphasizing a second standard for impeachment: "serious dereliction from public duty." This standard was defined by the House Judiciary Committee in 1970 in dismissing the allegations against Supreme Court Justice William O. Douglas. It is this second standard that applies to the negligence of Mr. Nixon time and again in relation to the White House horrors. And this standard applies to his abuse of public trust. Moreover, did the President ever "take care that the laws be faithfully executed?"

For presidential negligence, the Judiciary Committee should consider an omnibus impeachment article. Such an article should come at the end of spe-

cific criminal allegations, any one of which would be sufficient to remove Mr. Nixon from office. But removal is not the only point. The process is as vital as the result. And the process must go to the core of the problem: negligence—both criminal and political.

There is precedent for an omnibus impeachment article, albeit one that was put to a bad purpose. Article XI, the last of the impeachment articles against Andrew Johnson, was voted upon first, because it was thought to have the best chance of passing. As is well known, the article failed to carry by one vote.

Its author, Thaddeus Stevens, called his article "the gist and vital portion of this whole prosecution" and liked to think of it as "one and a half" articles of impeachment.

The problem is that Stevens was convinced that the specific case against Johnson was weak, and so devised his article as vague, complicated and difficult to attack. He made no effort to disguise his purpose.

"Never was a great malefactor so gently treated as Andrew Johnson," he began in introducing the article. He spoke of Johnson's actions as "monstrous usurpation, worse than sedition and little short of treason." And he scoffed at the articles relating to the Tenure of Office Act already adopted by the House.

"Their tender mercies have rested solely on the most trifling crimes and misdemeanors which they could select from the official life of Andrew Johnson," he said.

*"Surely the indictment of 18 of the President's highest aides or campaign officials says something about the leadership of the Commander-in-Chief."*

But his omnibus article would be different. "If my article is inserted," he boasted, "what chance has Andrew Johnson to escape, even if all the rest of the articles should fail. Unfortunate man! thus surrounded, hampered, tangled in the meshes of his own wickedness -- unfortunate, unhappy man, behold your doom!"

That Thaddeus Stevens was scandalously irresponsible, partisan, and vindictive should not undermine the notion of an omnibus article for this impeachment inquiry. It is vital that there be an article now—if any at all are reported out—which goes to the gist of the investigation of Mr. Nixon. If the battle is fought on the narrow ground of March 21, Congress will have made a mess of this impeachment proceeding also. And certainly if the President were removed on such a narrow ground, the remorse of the legislators who participated in it would be as great as it was after the Johnson fiasco.

An omnibus article now would do more than accentuate negligence and avoid a narrow debate on who said what to whom and what was the inflection of the voice. It would establish a principle that specific criminal charges can not; the principle of accountability. Surely the indictment of 18 of the President's highest aides or campaign officials, including three cabinet members and his chief of staff, says something about the leadership of the Commander-in-Chief.

Likewise, an omnibus article would destroy this lawdry concept of "deniability"—that so long as a public official in the public trust deliberately keeps himself in ignorance of criminal activity around him, he is not culpable. As Commander-in-Chief, the President bears the most fundamental responsibility for the acts of his subordinates. If the impeachment proceedings fail to make that point, they will have missed a vital opportunity.